STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY JOHNSON,

Defendant-Appellant.

UNPUBLISHED
June 22, 2006

No. 261721
Wayne Circuit Court
LC No. 04-011248-01

Before: Fort Hood, P.J., and Cavanagh and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), assaulting a police officer/resisting arrest causing injury, MCL 750.81d(2), and assaulting a police officer/resisting arrest, MCL 750.81d(1). Defendant was sentenced to nine months in jail for his possession of less than twenty-five grams of cocaine conviction, and to three years' probation for his assaulting a police officer/resisting arrest causing injury and assaulting a police officer/resisting arrest convictions. We affirm.

Defendant first argues that the prosecution presented insufficient evidence to sustain his convictions. We disagree. When reviewing a claim of insufficiency of the evidence, this Court does so de novo. *People v Mayhew*, 236 Mich App 112, 124-125; 600 NW2d 370 (1999). The Court reviews the evidence "in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003), citing *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In doing so, "[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime." *Id.*

To sustain defendant's conviction for possession of less than twenty-five grams of cocaine, pursuant to MCL 333.7403(2)(a)(v), the prosecution must prove that defendant "knowingly or intentionally possess[ed] a controlled substance." MCL 333.7403(1); see also *McKinney, supra* at 165-166. Possession of a controlled substance requires proof that the defendant had actual or constructive possession of the substance. *People v Konard*, 449 Mich 263, 271; 536 NW2d 517 (1995). The prosecution presented sufficient evidence to prove that defendant was in actual possession of cocaine. When defendant was apprehended by the police and placed in the squad car, Officer Brian Hancock noticed that defendant was reaching inside of his pocket. Officer Hancock then noticed that some money and a plastic bag fell out of

defendant's pocket. Lab tests confirmed that the "white lumpy and powdered material" that fell out of defendant's pocket showed the presence of cocaine. Thus, sufficient evidence was presented showing that defendant was in actual possession of cocaine.

The prosecution also presented sufficient evidence to sustain his convictions for assaulting, resisting and obstructing Officer Hancock and Officer Abron Carter. MCL 750.81d(1) provides, in relevant part:

> [A]n individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony . . .

MCL 750.81d(2) provides:

> An individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties causing a bodily injury requiring medical attention or medical care to that person is guilty of a felony . . . [See also *People v Ventura*, 262 Mich App 370, 374-375; 686 NW2d 748 (2004).]

"Obstruct" is defined to include "the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." MCL 750.81d(7)(a).

Sufficient evidence established that defendant was approached by Officer Hancock and Officer Kevin Barkman and that the officers were performing their duty. The officers were sent to the Ecorse housing community to investigate complaints of loitering and drug activity. When the officers asked defendant for identification, defendant replied that he did not have any identification on him and then he started to walk away. Officer Hancock tried to prevent defendant from walking away, but defendant jerked away from Officer Hancock. As defendant was running away from Officers Hancock and Barkman, defendant ran into Officer Carter who shouted for defendant to "stop." However, defendant did not stop at Officer Carter's request, but, he instead hit Officer Carter on the side of his face. Defendant and the officers then continuously struggled, and two officers fell to the ground. At some point during the struggle, defendant injured Officer Hancock's knee, and he required medical attention. Defendant was placed inside of the squad car and taken to the police station.

Defendant argues that the evidence was insufficient to sustain his convictions because he was never given a lawful command. Defendant also argues that because he was never told that he was under arrest, he was not resisting arrest, but merely, resisting being questioned. We disagree. The evidence shows that defendant was told to "come here" and to "stop" by two different police officers, but defendant continued to ignore the officers' requests. Police officers may ask for identification without implicating the Fourth Amendment. *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005). Defendant's argument that he did not resist arrest, but rather, he resisted questioning is also without merit. Defendant was convicted of violating MCL 750.81d(1) and (2), which makes it felony for defendant to assault, obstruct or endanger a person who defendant knows is performing his or her duties. There is no language in the statute that requires that defendant actually be under arrest. The prosecution presented sufficient evidence to prove that defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered

Officer Hancock causing a bodily injury requiring medical attention and that defendant knew Officer Hancock was performing his duty as a police officer when defendant did so. The prosecution also presented sufficient evidence to prove that defendant assaulted, battered, resisted, obstructed, opposed, or endangered Officer Carter and that defendant knew Officer Carter was performing his duty as a police officer at the time.

Defendant next argues that he was denied his right to a properly instructed jury when the trial court denied his request for a self-defense instruction. We disagree. This Court reviews preserved claims of instructional error de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). This Court reviews jury instructions in their entirety to determine if reversal is required. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995).

A criminal defendant has the right to have a properly instructed jury. *People v Rodriguez*, 463 Mich 466, 472; 620 NW2d 13 (2000). For that reason, "jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them." *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000), citing *People v Reed*, 393 Mich 342, 349-350; 224 NW2d 867 (1975). Although defendant argues that the court should have instructed the jury on his theory of the case, defendant presented no evidence that warranted a self-defense instruction.

To establish a claim of self-defense a defendant must have an honest and reasonable belief that his life is in danger, or that there is a threat of serious bodily harm. *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002); *People v Green*, 113 Mich App 699, 704-705; 318 NW2d 547 (1982). No evidence was presented that substantiated defendant's claim that he acted in self-defense. Review of the evidence revealed that defendant failed to provide identification and walked away from police. When Officer Hancock reached for defendant to prevent defendant from walking away, defendant jerked away from the officer and then he ran away. Defendant argues that he ran away because he was fearful of what the officers might do to him because he had a pending lawsuit against two officers at the scene. However, defendant testified that he ran away from Officer Hancock, and when he looked back, he saw "Officer Carter and them" approaching him. Even though defendant had a pending lawsuit against Officers James Frierson and Carter at the time of this incident, there is nothing in the record that shows these officers, or the other officers at the scene, did anything to make defendant believe that he was in "imminent danger of death or great bodily harm" and that it was necessary for him to exercise force against all of the officers. *Riddle*, *supra* at 119. The evidence did not support a self-defense instruction, and therefore, defendant's instructional request was properly denied.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto